



EVERYTHING YOU EVER WANTED TO KNOW
ABOUT COMPREHENSIVE PLANS...
BUT WERE AFRAID TO ASK!

February 15, 2022

Owen County Commissioners Chambers

Who are we and what are we doing?



Scott Burgins
Project Manager



K.K. Gerhart-Fritz FAICP
Zoning & Training



Cory Whitesell, PE
Director of Planning



Rachel Christenson, AICP
Planner



What is K.K.'s
Role in the
Comprehensive
Plan?

- **2 Training Sessions**

- Tonight
- After New Comprehensive Plan

- **Written Ordinance Recommendations**

- my next task



What will K.K.'s
Ordinance
Recommendations
include?

Written assessment of current zoning & subdivision ordinance(s), review of staff comments & review of past ordinance modifications

General recommendations examples:

- **Zoning Districts** – Adding an additional zoning district (i.e., Intensive Agricultural, etc.)
- **Development Standards** – Adding things like infill “form” standards to blend in with what already exists
- **Uses** – Modernizing use lists (e.g., adding solar and wind regulations, etc.)

What will K.K.'s Ordinance Recommendations include?

General recommendations examples:

- **Best Practices** – Reducing “Black Friday” levels of required parking to reduce impervious surfaces and run-off
- **Typical Regulations for Peer Communities** – Things to consider that are common in other Indiana’s counties
- **Process Adjustments** – Ways to simplify processes (like a Plat Committee) or new steps that might help (required pre-meetings)
- **User-friendly** – Better organization and more graphics (i.e., use a table with standards in each zoning district, illustrations with definitions)
- **Compliance with State Code, Federal law and Case Law** – I am not an attorney, but try to point out issues for further legal investigation
- **Comprehensive Plan** – Plan will also include recommended parallel ordinances changes in the implementation chapter

Who are YOU and what are YOU doing?

- **Steering Committee:** Norm Warner, George Brinson, Matt Cazzell, Linda Bertrum, Larken Seymour, Sonya Seymour, Chris Bault, Kurt Rosenberger, Kristen Portteus, Lisa Abbott, Aaron LaGrange, Grant Beaman, Matt Sword, Debbie Holcomb
- **County Officials:**
 - BZA
 - Plan Commission
 - County Commissioners
 - County Staff
- **Community Leaders**



Your Role: Represent the rest of the community, act as Planning cheerleaders and help us figure out what works for Owen County! Follow through after the new Comprehensive Plan is adopted!

What is Plan Commission's ROLE?

1. Appointed or serve by virtue of office (County Surveyor)
2. Prepares* Comprehensive Plan & Amendments (IC 36-7-4-501)
3. Prepares* Zoning & Subdivision Ordinances & Amendments (IC 36-7-4-602a) & (IC 36-7-4-701b)
4. Provides Rezoning Recommendations (IC 36-7-4-602b)
5. Provides Comp Plan & Zoning Ordinance Recs after holding official public hearings
6. Final Subdivision Plat Approval (& Development Plan, if applicable)

** Prepared with assistance by staff, consultants, volunteers*

Plan commission = traditionally the land use experts

What is BZA's ROLE?

BZA = the seekers of land use justice (the relief valve)

1. Hears appeals of administrative (staff) decisions
2. Hears development standard & use variance requests
3. Hears conditional use requests
4. May also do interpretations, informal advice
5. May also initiate lawsuits

***Also, point out parts of zoning ordinance that need "fixed" (i.e., variances granted regularly)**

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What is the County Commissioner's ROLE?

1. Elected legislative body
2. Power to adopt comprehensive plan by resolution
3. Power to adopt Unified Development Ordinance (zoning + subdivision)
4. Appoints board & commission members
5. Accepts R.O.W dedication, financial guarantees

What is the difference between Ordinance and the Comprehensive Plan?

Comprehensive Plan = a Policy (not an enforceable law)

Zoning and Subdivision Ordinances = enforceable local law

Comprehensive Plan 1st, then Zoning & Subdivision Control Ordinances

What does Indiana require for Comprehensive Plans ?

Maps in the new Comprehensive Plan can be used in your decision-making!


Indiana Code (500 Series of Title 36-7-4)

1. A statement of objectives for the future development of the jurisdiction.
2. A statement of policy for the land use development of the jurisdiction.
3. A statement of policy for the development of public ways, public places, public lands, public structures, and public utilities.

- Very minimal compared to other states.
- State law allows optional elements
- OCRA funds & sets plan content rules, which exceed state law...

New Comprehensive Plan will also have:

- Future Land Use Map
- Transportation plan maps from MyPath
- Subarea maps



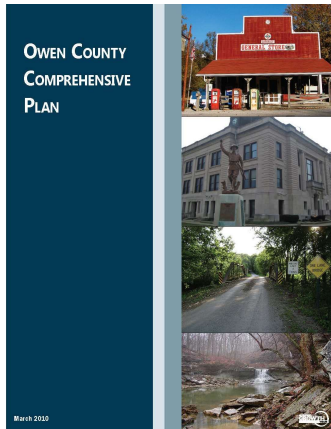
What Plans can be part of a Comprehensive Plan?

- **Comprehensive Plan** = Also an overall Plan/Framework for all other plans
 - Examples of other plans legally considered part of the Comprehensive Plan, if adopted:
 - Economic Development Plan
 - Housing Plan
 - Park Master Plan
 - Thoroughfare Plan
 - Trails Plan
 - Sub-county Area Plans – Corridor, Downtown, etc.
- 

What Owen County Plans do we have? Which are Adopted?

2009

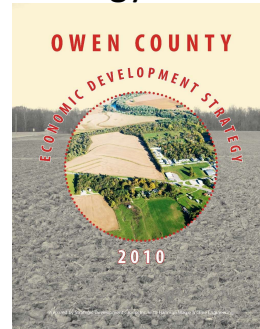
**Owen County and
Spencer
Comprehensive
Plans — formally adopted**



Use for Zoning decisions

2010

**Economic Development
Strategy**



Not for Zoning decisions

2019

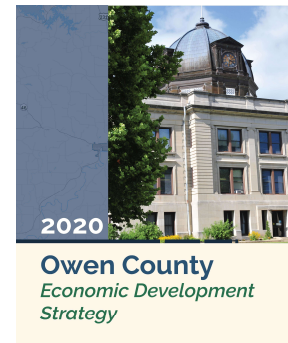
**QOL & Workforce
Attraction Plan**



**MYPATH Grant -
Not for Zoning
decisions**

2020

**Economic Development
Strategy**



Not for Zoning
decisions

- **State Law requires use of Comprehensive Plan:**

- **Plan Commission and County Commissioners:** use Plan for guidance on Rezoning.
- **Board of Zoning Appeals:** use Plan for guidance on Variances.

- **Your Zoning Ordinance also requires BZA use Comprehensive Plan for Conditional Uses**

- **Other Comprehensive Plan uses:**
 - Unite community, Guide County's budget & spending, win \$ from grants, position of power with other organizations (INDOT, Schools, Utilities, adjacent local governments, etc.)

What do you
use the
Comprehensive
Plan for?

How are we
supposed to
make land use
decisions?


- Criteria are minimum standards...a checklist
- Intention is that it makes your decision easier and less subjective

State law provides criteria to use for:

- **Rezoning**s (Plan Commission & County Commissioners)
- **Development Standards Variances** (BZA)
- **Use Variances** (BZA)

Local law is criteria for:

- **Subdivision Plats** (Plan Commission)
- **Development Plans**, if used (Plan Commission)
- **Conditional Uses** (BZA)

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How are we
supposed to
make land use
decisions?

- **Must meet all criteria or request should not be granted** (see Indiana Case Law)
- Compliance with the **Comprehensive Plan** is a common criteria for various land use decisions

Do we have to
formally
document our
decisions?

- Indiana Code requires adoption of **Findings of Fact** for certain actions:
 - **Primary Subdivision by Plan Commission**
– IC 36-7-4-707
 - **Development Plan by Plan Commission --**
IC 36-7-4-1406
 - **Use Variance by BZA**
 - **Development Standards Variance by BZA**
 - **Conditional Use by BZA**
- Findings of Fact should be based on the applicable criteria, state or local
- You must have findings to document approvals or denials!

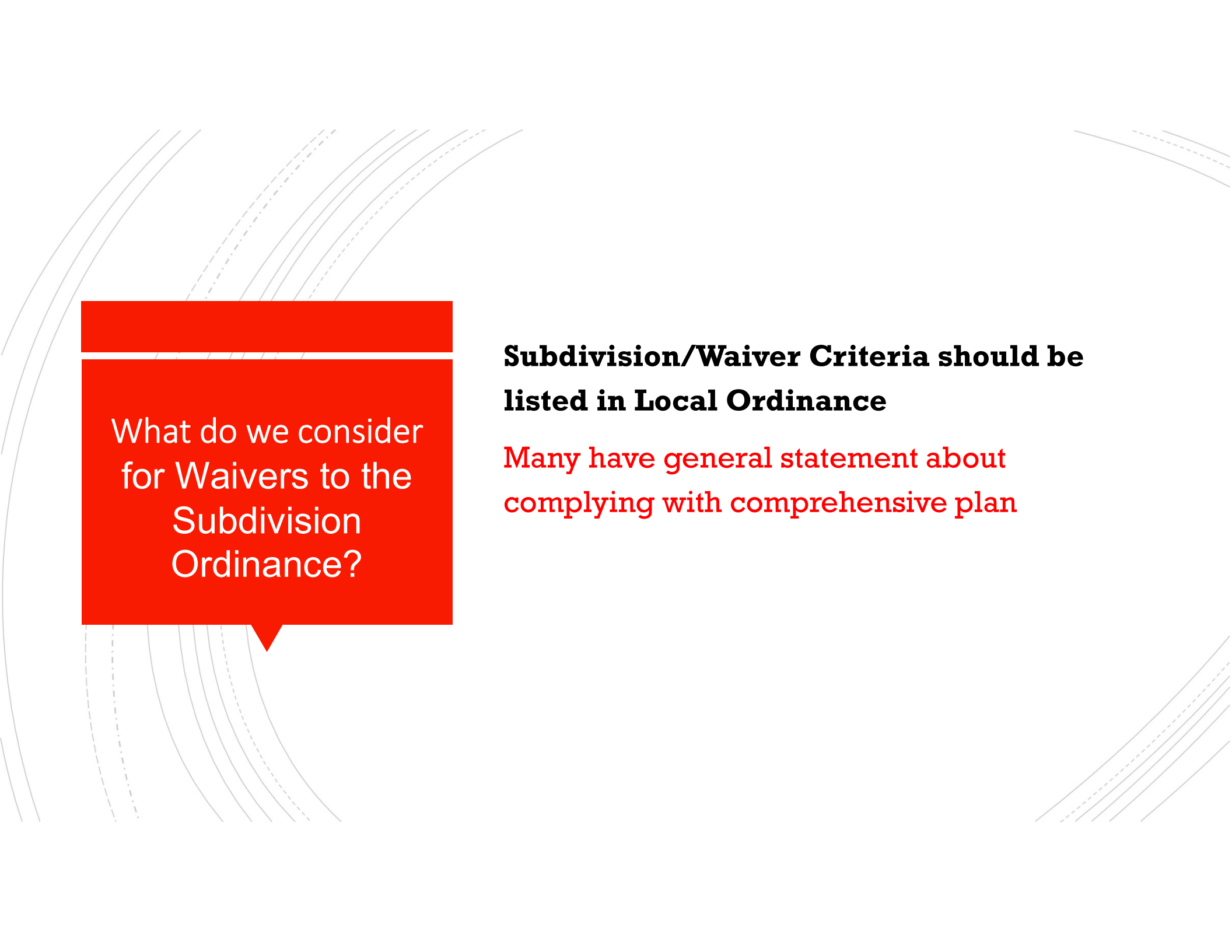
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How do Plan Commission & County
Commissioners use the Comprehensive
Plan for Land Use Decisions?

What do we
consider for
Subdivisions?

- **There are no state law criteria for Subdivisions**
 - Each community sets their own local subdivision ordinance standards
 - **Many subdivision ordinances have a general statement about complying with comprehensive plan**
- Follow your standards -- if a proposed plat meets all your subdivision ordinance standards, you must approve it!
- *If you don't like your standards, change them!*

If your new plan requires sidewalks and developer refuses to provide them, can you deny their plat?

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What do we consider
for Waivers to the
Subdivision
Ordinance?

**Subdivision/Waiver Criteria should be
listed in Local Ordinance**

Many have general statement about
complying with comprehensive plan

What do we
consider for
Development
Plans?

- **Development Plans, IC 36-7-4-1400 series**, are optional site plan approval process for Plan Commission
- May require for certain uses and/or certain zoning districts
- Owen County does not use them
- To use, must amend Zoning Ordinance and set up **Local Ordinance Criteria**

*What would you like to see get Development Plan review in Owen County?
How could this process relate to the Comprehensive Plan?*

What do we
consider for
Rezoning?

*What does it mean to pay
“reasonable regard”?*

IC 36-7-4-603: The plan commission and the legislative body shall pay reasonable regard to:

- (1) the comprehensive plan;
- (2) current conditions and the character of current structures and uses in each district;
- (3) the most desirable use for which the land in each district is adapted;
- (4) the conservation of property values throughout the jurisdiction; and
- (5) responsible development and growth.



Try it out: What
is your Rezoning
Decision?

- Applicant wants to rezone 50 A of cropland to Commercial on local level street with no public water or sewer
- New Comprehensive Plan Future Land Use Map shows area as residential
- New Comprehensive Plan goals state that all commercial development should have public water and sewer and should be on collector or arterial level streets
- County needs economic development! Lots of support from neighbors.
- ***Review 5 rezoning criteria – what should you do?***

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How does BZA use the
Comprehensive Plan for Land Use
Decisions?

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Why do we have VARIANCES?

- **Variances solve problems created by applying the generalities of the Zoning Ordinance to specific situations -- it introduces needed flexibility.**
- For the unusual “Grey Areas”
 - Variances mean you don’t have to follow the same rules as everyone else
 - Variances are meant to be occasional, not the rule.

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What
VARIANCES do
we have in
Owen County?

- 1) **Variances from Developmental Standards:** includes modifications of required setbacks, building heights, parking requirements, landscaping or other physical standards, etc.
- 2) **Use Variances:** allows a land use that is not permitted in the district where the property is located

What do we consider for Use Variances?

Follow IC 36-7-4-918.4

- (1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community
- (2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner
- (3) the need for the variance arises from some condition peculiar to the property involved

(continued on next slide)

What do we
consider for Use
Variances?

(continued from previous slide)

Follow IC 36-7-4-918.4

(4) the strict application of the terms of the zoning ordinance will constitute an **unnecessary hardship** if applied to the property for which the variance is sought

(5) the approval doesn't interfere substantially with the adopted comprehensive plan



Try it out: What is
your Use Variance
Decision?

- Applicant wants use variance to allow wedding venue on 2 A of property zoned single-family residential, which does not allow that use. Property is an old farmstead, containing a home over 100 years old. It is currently being used for specialty farming and is on an unpaved county road. It has well and septic.
- New Comprehensive Plan Future Land Use Map shows area as Agricultural
- New Comprehensive Plan states that the new zoning ordinance should allow more “Agricultural Tourism & Entertainment” and set up standards, but the ordinance has not been updated to do that yet
- Everyone loves this historic home and likes the owners and the wildflowers they sell at the Farmers Market in the summer!
- Valentines Day was yesterday – weddings are romantic!
- ***Review the 5 use variance criteria – what should you do?***

What do we
Consider for
Development
Standards
Variances?

Follow IC 36-7-4-918.5

- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community
- (2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner
- (3) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property

Criteria don't specifically say "Comprehensive Plan", so does it apply here?

Do we need to
make getting a
Development
Standards
Variance harder?

Indiana Code 36-7-4-918.5 (a)(3) allows you to adopt extra development standards criteria!

“... your local ordinance may establish a stricter standard than the "practical difficulties" standard”

Many communities in Indiana have **additional criteria** in their local ordinance for development standards variances, primarily:

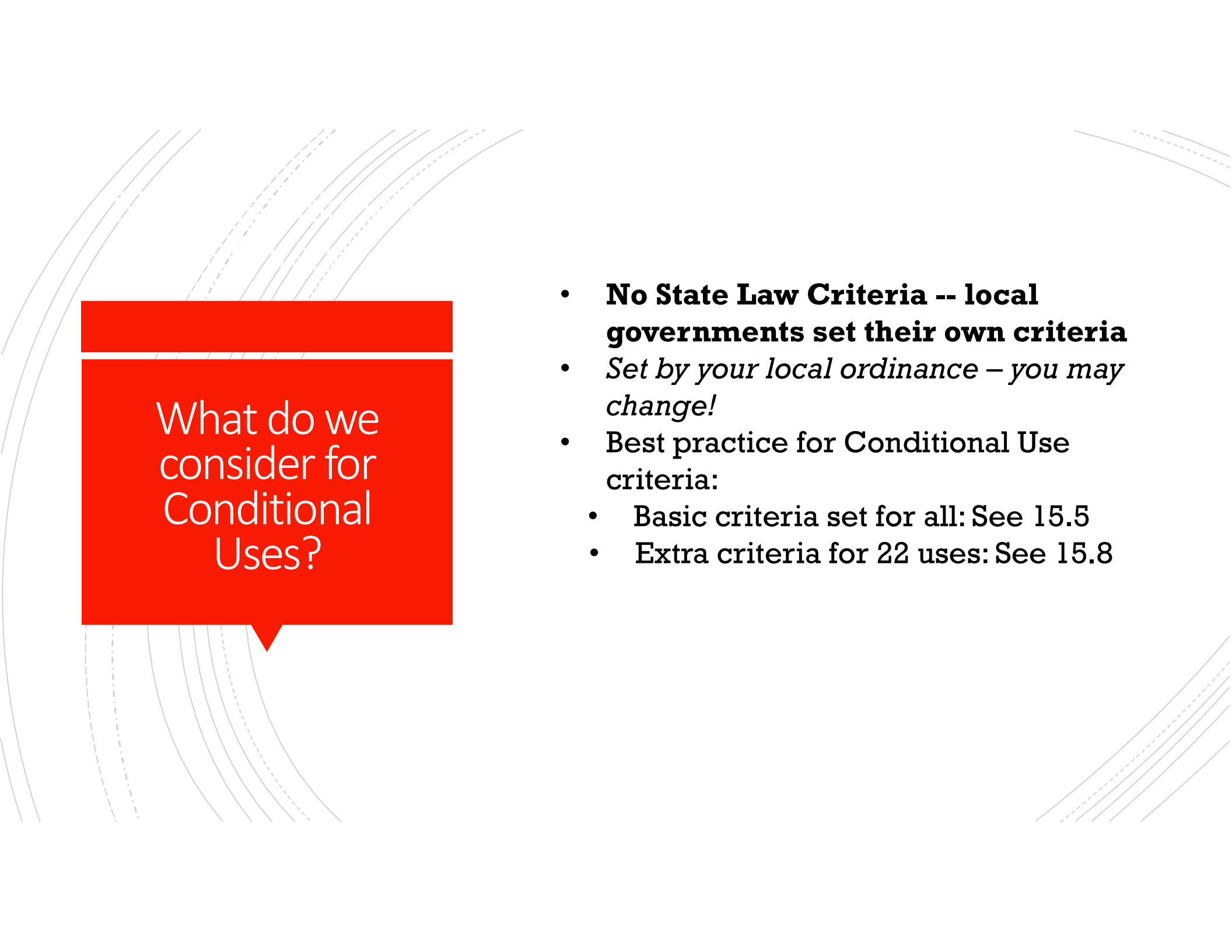
- **the variance granted is the minimum necessary**
- **the variance granted does not correct a hardship caused by a former or current owner of the property**

Should Owen County add extra Development Standards Variance Criteria?

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Why do we have Conditional Uses?

- "Case-by-Case" review of land use
- Conditional use may or may not be appropriate in zoning district, depending on the proposed site



What do we
consider for
Conditional
Uses?

- **No State Law Criteria -- local governments set their own criteria**
- *Set by your local ordinance – you may change!*
- **Best practice for Conditional Use criteria:**
 - Basic criteria set for all: See 15.5
 - Extra criteria for 22 uses: See 15.8

What do we
consider for
Conditional
Uses?

15.5 - Standards for Approval

In order for a conditional use to be approved, the Board must find that:

- A. the requested conditional use is one of the conditional uses listed in the zoning district in which the subject property is located. In addition to the other relevant standards imposed by or pursuant to this chapter, the standards, uses and conditions set forth in Article VIII are hereby incorporated as standards, uses and conditions of this chapter;
- B. all conditions, regulations and development standards required in the Zoning Ordinance shall be satisfied;
- ← C. granting the conditional use shall not conflict with the general purposes of the Zoning Ordinance or with the goals and objectives of the Comprehensive Plan;
- D. the conditional use property can be served with adequate utilities, access streets, drainage and other necessary facilities;
- E. the conditional use shall not involve any element or cause any condition that may be dangerous, injurious or noxious to any other property or persons, and shall comply with performance standards delineated in this ordinance;
- F. the conditional use shall be situated, oriented and landscaped (including buffering) to produce a harmonious relationship of buildings and grounds with adjacent structures, property and uses;
- G. the conditional use shall produce a total visual impression and environment which is consistent with the environment of the neighborhood;
- H. the conditional use shall organize vehicular access and parking to minimize traffic congestion in the neighborhood; and,
- I. all permits required by other Federal, State, and local agencies have been obtained.

What do we
consider for
Conditional
Uses?

15.5 C: Basic criteria says **granting the conditional use shall not conflict** with the general purposes of the Zoning Ordinance or **with the goals and objectives of the Comprehensive Plan;**

15.3 (B) requires the Director to prepare a staff report and specifically **address potential impacts on the Comprehensive Plan**

15.7 (A) says that even if the proposed conditional use “constitutes the highest and best use which can be made of the property”, it may still be denied – ***what determines the highest and best use?***

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How do we get
better
decisions?

- Better ordinances
- Adopt plans
- Base on required criteria
- Require complete applications, submitted on time
- Ask for additional information if needed – communicate with staff first, before meeting. If asking applicant, wait until meeting.
- Stipulate temporary conditions or permanent commitments as part of approval
- Follow-up to ensure compliance... enforce!

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How do we get more information?

- Your Zoning Ordinance/Subdivision Ordinance states what must be submitted and shown on applications and drawings – *you may change this to whatever you want*
- Your ordinance allows the Director to ask for “other information reasonably required” – *you may change this wording*
- Your ordinance specifically empowers you to require submission of an Environmental Impact Study if needed

Ask for other information as needed

Examples: traffic study, fiscal study, flood zone study

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What are written commitments?

- Written Commitments are long-term and permanent:
 - You can require the property owner to do
 - Record commitments in the Owen County Recorder's Office
 - Commitments binding on future owners of the subject property
- Different than Conditions, which are short-term requirements administered by staff (i.e., correct drainage report before getting permit)

What is a BZA
written
commitment
example?

**For a Side Yard Setback Variance for a 3-Plex
Unit adjacent to Single-Family Residential**

Good Commitment: Requiring the 3-plex owner construct a 6' tall opaque screen along the common side yard.

Bad Commitment: Requiring the 3-plex owner to plant several street trees in the front yard of the house next door.

What is a Plan
Commission
written
commitment
example?

For a Rezoning to Commercial on a narrow parcel on a local street

- **Good Commitment:** Prohibiting a certain land use (i.e., a drive-through), when all other uses are compatible and would fit the lot.
- **Bad Commitment:** Requiring any parking lot contain extra-wide parking spaces to accommodate your dually pick-up truck

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When can you deny a case?

1. when you don't have a quorum
2. if it is unpopular
3. if all criteria haven't been met

**OWEN COUNTY
COMPREHENSIVE
PLAN**

March 2010



Use this Plan now in
your Planning
Decision-Making!

What Ordinance work happens now, as part of the Comprehensive Plan?

1. KK Assesses Ordinances

- What works now?
- What is missing?
- Best Practices
- Variances & Waiver Patterns

2. KK Recommends Changes

- Directly from Comprehensive Plan (and other plans)
- Recs from Step 1 (Ordinance Assessment)

3. KK Does 2nd Training

- What has changed with new plan?
- How to use new plan

What is the Plan Adoption Process?

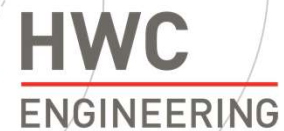
- STEERING COMMITTEE MEETINGS – 3 so far + 2 more planned
 - minutes from meetings at owencountycompplan.com
- PUBLIC SURVEY: 160 responses between February 1 - 10 at Owen County Comprehensive Plan - Public Input Survey (surveymonkey.com)
- FOCUS GROUPS in March 2022
- PUBLIC REVIEW DRAFT & OPEN HOUSE, April 2022
- OCRA Report by June 2022
- PLAN ADOPTION per Indiana Code Process
 - Legal Notice, Plan Commission Public Hearing, County Commissioners Adopt by Resolution, Publish Notice of Adoption

What Ordinance happens after the Comprehensive Plan is adopted?

Update Zoning Ordinance & Subdivision Ordinance (combined Unified Development Ordinance)

If you don't adopt new ordinances or significantly update the ones you have after plan adoption, you won't be successful achieving the County's future goals!

Questions?



What can we do about NIMBYs and LULUs in Zoning Ordinance?

- Limit to 1 Zoning District.
- Require BZA additional approval for use
- Require Plan Commission additional site plan approval
- Set special ordinance standards for problem uses (setbacks, hours).
- Require pre-hearing meeting for surrounding property owners.
- Tighten up nonconforming standards, so they don't last forever.

**NIMBY = Not In My Back Yard*

**LULU = Locally Unwanted Land Use*

What can we do in Zoning Ordinance to help preserve local character?

- Develop Conservation-Focused Zoning District, so new infill compatible with existing (i.e., single-family housing core).
- Develop “form based” infill standards: average setbacks, maximum square footages, common features – i.e., front porches, etc.
- Adopt new common-sense housing regulations (i.e., accessory apartments, mixed use)
- Reward preservation of natural features (wooded areas, etc.)
- Reward preservation of historic features (rehab historic buildings instead of rebuilds)
- Implement multiple Agricultural Districts to recognize different types/scales.
- Separate conflicting uses (Agricultural and Major Subdivisions).
- Tighten up nonconforming standards to help phase them out
- Expect new development to meet or exceed local standards (roads, landscaping, etc.)